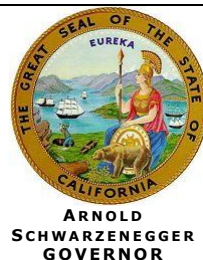




STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



For Meeting Date: April 9, 2009

Agenda Item No. 6: Pre-Hearing Conference in the Matter of the Request for Determination for Vested Rights, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.

BACKGROUND: The State Mining and Geology Board (SMGB) serves as a Lead Agency in the implementation of the Surface Mining and Reclamation Act of 1975 (SMARA) in Yuba County. In a recent ruling, the California Court of Appeal, Third Appellate District, held that a proper notice and hearing was required for any vested rights determination, and suggested that when the SMGB is acting as the SMARA Lead Agency, the SMGB has the responsibility to conduct the public hearing and make the vested rights determination.

On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008. At its February 5, 2009, regular business meeting, it was determined that the SMGB would act the hearing officer during conduct of a public hearing for a vested right determination in the matter of Western Aggregates, LLC, surface mining operation located in Yuba County. The SMGB is holding this pre-conference hearing to address scheduling for the public hearing.

REGULATORY AUTHORITY AND CONSIDERATIONS: As part of the administrative procedures for conduct of a vested rights determination when the SMGB serves as a lead agency pursuant to SMARA, Article 15 California Code of Regulations (CCR) Section 3958 provides considerations for scheduling of the public hearing, and states:

"The Board, its delegated committee, administrative hearing officer or special master shall schedule and hold a public hearing on a vested rights determination no less than 90 business days after the notice of pending vested rights determination was mailed pursuant to Section 3955. In no case shall the hearing be scheduled more than 180 business days after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952 unless such hearing schedule is agreed to by the party claiming vested rights. The hearing scheduled may be within the county where the vested right is claimed or within the county of the Board's offices (County of Sacramento)."



Executive Officer's Report

BACKGROUND: Western Aggregates, LLC, filed a vested right Request for Determination on November 5, 2008. A chronology of pertinent administrative procedural actions taken to date is summarized below:

Chronology of Pertinent Administrative Procedural Actions Western Aggregates, LLC. Request for Vested Rights Determination	
Administrative Action	Date Exercised
Receipt of Request for Determination with Administrative Record	November 5, 2008
Determination of Jurisdiction	December 1, 2008
Mailing of Notice of Pending Vested Rights Determination	January 6, 2009; amended January 12, 2009
Determination of Hearing Officer	February 5, 2009
Estimated Cost for Determination of Findings Provided to Claimant	January 27, 2009
Commencement of Review of Administrative Record by CGS	March 3, 2009
Determination of Schedule	April 9, 2009
Notice/Submission of Written Materials	90 calendar days prior to scheduled public hearing
Commencement of Public Hearing	Between May 18 and September 22, 2009

The administrative record received on November 5, 2008, is comprised of three volumes (Volumes I, II and III-A, III-B and III-C), and 20 volumes of historical record containing over 12,000 pages. The Administrative Record is accessible for review at:

The Yuba County Government Center
915 8th Street, Suite 109
Marysville, CA 95901

And,

State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, CA 95814



A determination of findings based on review by the California Geological Survey (CGS) of the Administrative Record is in progress.

CONSIDERATION BEFORE THE SMGB: The purpose of the pre-hearing conference is for the Board to hear from the parties potential issues regarding scheduling and to consider preliminary scheduling of the hearing, possibly in one or more phases. The conduct of the public hearing for the purpose of the SMGB to make a vested rights determination for Western Aggregates' surface mining operations located in Yuba County, pursuant to CCR Section 3958, should commence between the period of May 18 and September 22, 2009. The tentative scheduling of the public hearing is at the discretion of the SMGB. The Executive Officer offers no recommendation at this time.

SUGGESTED MOTION LANGUAGE: The Executive Officer offers the following motion for the SMGB's consideration:

Motion for the SMGB to tentatively schedule a public hearing:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board schedule a public hearing for a vested rights determination for Western Aggregates, LLC. surface mining operation located in Yuba County, for _____, 2009.

Respectfully submitted:

Stephen M. Testa
Executive Officer



Executive Officer's Report